



Terry Tamminen
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Executive Office

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Arnold Schwarzenegger
Governor

DEC 11 2003

Mr. Calvin Fong, Chief
Regulatory Branch
San Francisco District
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105

Dear Mr. Fong:

**ORDER FOR TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION:
REGIONAL GENERAL PERMIT 5 (RGP 5) FOR REPAIR AND PROTECTION ACTIVITIES IN
EMERGENCY SITUATIONS (CORPS FILE NUMBER 28218S)**

This Order responds to your request for Water Quality Certification for the subject project. This certification is intended to streamline the approval process for dredge and fill activities necessary to prevent or mitigate an emergency.

ACTION

- ☐ Order for Standard Certification
- ☒ Order for Technically Conditioned Certification
- ☐ Order for Denial of Certification
- ☐ Order for Waiver of Waste Discharge Requirements

STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR 23).
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

California Environmental Protection Agency

3. This certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23, and owed by the applicant.

ADDITIONAL CONDITIONS:

1. This certification is limited to emergency actions that meet the California Environmental Quality Act (CEQA) definition of "emergency." Under CEQA, California Public Resources Code section 21060.3, an "emergency" is defined to be:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

2. Emergency projects exempt from the requirements of CEQA are defined by State of California Administrative Code (CEQA Guidelines) section 15269 as:

- (a) *Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant of the California Emergency Services Act, commencing with section 8550 of the Government Code.*
- (b) *Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.*
- (c) *Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.*
- (d) *Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.*
- (e) *Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.*

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3. Permitted activities shall not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters, as adopted in the Water Quality Control Plan (Basin Plan) by a Regional Water Quality Control Board (RWQCB) or statewide plans adopted by the State Water Resources Control Board (SWRCB).
4. Simultaneous with submittal to U.S. Army Corp of Engineers (USCOE), permittees shall transmit copies of (a) the "Construction Notification" required by RGP 5 General Condition No. 2 (Notification/Communication), and (b) the "Post-Project Construction Final Report" required by Condition No. 26 (Reports) to the SWRCB and the appropriate RWQCB(s), addressed as follows:

Program Manager
401 Water Quality Certification Program
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento CA 95812-0100

Program Manager
401 Water Quality Certification Program
(Address of appropriate RWQCB(s))

The applicant shall provide a fee of \$60 for review and processing of the notice in accordance with California Code of Regulations Title 23, section 2200. If the applicant is not contacted by the RWQCB within 30 days of the postmarked date of the "Construction Notification," the applicant may assume that the project meets the conditions of this certification order and may proceed with the project.

5. Permitted activities shall not result in the taking of any State endangered species, threatened species, or candidate species or the habitat of such a species unless the activity is authorized by the Department of Fish and Game (DFG) pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ "General Waste Discharge Requirements (GWDR) for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification. This GWDR can be accessed at "<http://www.swrcb.ca.gov/cwa401/index.html>."

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in

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compliance with the applicants' project description (Enclosure 1) and the enclosed Project Information Sheet (Enclosure 2), and (b) compliance with all applicable requirements of the RWQCB's Water Quality Control Plan.

If you have any questions, please contact Ruben A. Guieb, Environmental Scientist, Water Quality Certification Unit, at (916) 341-5464 or email: guier@dwq.swrcb.ca.gov. You may also call Oscar Balaguer, Chief of Water Quality Certification Unit at (916) 341-5485 or email: balao@dwq.swrcb.ca.gov.

Sincerely,



Celeste Cantú
Executive Director

Enclosures (2)

cc: Mr. Ed Wylie
Regulatory Branch
San Francisco District
U.S. Army Corp of Engineers
333 Market Street
San Francisco, CA 94105

Mr. Carl Wilcox
Department of Fish and Game, Region 3
P.O. Box 47
Yountville, CA 94599

Mr. Tim Vendlinsky
Wetlands Regulatory Office
U.S. Environmental Protection
Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Mr. Wayne S. White
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

PROJECT INFORMATION SHEET

1.	Applicant & Agent	U.S. Army Corps of Engineers (USCOE), San Francisco District.
2.	Project Name and Purpose	<p>Reauthorization of Regional General Permit 5 (RGP 5) for Repair and Protection Activities in Emergency Situations</p> <p>RGP 5 authorizes discharges of dredged or fill material into waters of the United States, including wetlands, and/or work or structures in navigable waters of the United States for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).</p> <p>USCOE issued RGP 5 on April 24, 2001 and it was certified by the State Water Resources Control Board (SWRCB) on March 7, 2001. The permit had a two-year term and expired on August 31, 2003. USCOE proposes to re-issue the same general permit, but its term has been extended to 10 years (Enclosure 1).</p>
6. 7.	Receiving Water(s); Hydrologic Unit(s); Latitude/Longitude; Water Body Type(s) & Area of Filled/ Excavated Waters (Acres); Dredge Volume (CY)	RGP 5 can authorize eligible discharges in all waters within the jurisdiction of the USCOE San Francisco District. Project-specific information will be included in the construction notification and post-project reports, which will be provided to the USCOE, appropriate Regional Water Quality Control Board (RWQCB), and SWRCB.
8.	Federal Permit	RGP 5
9.	Non-Compensatory Mitigation	<p>The RGP requires avoidance and minimization to the maximum extent practicable, limits work to the minimum necessary to alleviate the immediate emergency; it is not applicable where federal – listed endangered or threatened species may be jeopardized; it specifies erosion control measures, and it includes other management measures to limit impacts from the authorized work.</p> <p>The discharger will provide USCOE with a post-project report to ensure the discharge is in compliance with RGP 5. As a condition of certification, the RWQCB and SWRCB will also be sent copies of the report.</p>
10.	Compensatory Mitigation	None. Project-specific compensation may be required by USCOE in consideration of the value of the impacted resources, permanence of impacts, and potential long-term effects on remaining functions and values.
11.	Optional Additional Information: CEQA Compliance	Water Quality Certification for the activities authorized under RGP 5 is statutorily exempt from the requirements of California Environmental Quality Act (CEQA) pursuant to Public Resources Code sections 21080(b)(2-4).